

THE HONORABLE SHARON L. GLEASON

Suzanne L. Elliott
Law Office of Suzanne Lee Elliott
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104-1705
(206) 623-0291
suzanne-elliott@msn.com

Mark A. Larrañaga,
Walsh & Larrañaga
140 Lakeside Ave., Suite #338-A
Seattle, WA 98122
(206) 972-0151
Mark@jamlegal.com

Theresa M. Duncan
Duncan Earnest, LLC
222 East Marcy Street
Suite 1
Santa Fe, NM 87501
505-710-6586
teri@duncanearnest.com

Attorneys for Defendant John P. Smith

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN PEARL SMITH, II,

Defendant.

No. 3:16-cr-0086-SLG

**UNOPPOSED MOTION TO RETURN
DEFENDANT JOHN SMITH TO FDC
SEATAC PENDING TRIAL**

Defendant John Pearl Smith, II, respectfully asks the Court to order the United States Marshal Service to return him to FDC SeaTac as soon as possible and to allow him to remain

1 at FDC SeaTac pending trial. The government has no opposition to this request. As grounds
2 for the relief requested, Mr. Smith states as follows:

3 1. Since December 2018, Mr. Smith has been detained at FDC SeaTac in
4 Seattle, Washington pending trial in this matter. ECF No. 279. He was moved to SeaTac to
5 allow him to meet in confidence with his counsel, two of whom reside in Seattle. The move
6 was in response to the revelation that the Anchorage Correctional Complex (ACC) was
7 videotaping meetings between Mr. Smith and counsel. *Id.* Mr. Smith's presence in Seattle
8 has enabled his counsel to meet with him far more regularly than would have been feasible
9 had Mr. Smith remained at the ACC.¹

10
11 2. Last month, the United States Marshal Service moved Mr. Smith from FDC
12 SeaTac to ACC in anticipation of the then scheduled October 18, trial date. However, due
13 to the current COVID-19 outbreak in Alaska, the trial date was vacated on September 29,
14 2021, and no new trial date has been set. ECF No. 1131. The Court has scheduled a
15 telephonic status conference for November 18, 2021, to assess the conditions in Alaska and
16 when a new trial date may be feasible. ECF No. 1132. Because the status conference will be
17 telephonic, Mr. Smith will participate remotely and need not be in Anchorage at the time of
18 the hearing.

19
20 3. As noted above, two of Mr. Smith's counsel reside in Seattle, Washington,
21 as does the attorney-paralegal who will be assisting counsel at trial and who has also met
22 regularly with Mr. Smith. Mr. Smith's third counsel lives in New Mexico, and it is
23 significantly less expensive and time-consuming for her to travel to Seattle than Anchorage.

24
25 ¹ Mr. Smith has done remarkably well while at FDC SeaTac. He obtained employment and
has had no disciplinary issues.

1 4. More importantly, because of the current COVID-19 outbreak, Mr. Smith's
2 counsel cannot travel to Anchorage to meet with him. Effective September 23, 2021, the
3 Alaska DOC suspended in person visits at ACC.² As of October 2, 2021, Alaska's infection
4 rate per 100,000 people is almost five times the national average.³ At this time, it is unclear
5 when Alaska will recover from the current outbreak.⁴ Thus, it may not be safe for counsel
6 to travel to Alaska to meet with Mr. Smith in the coming months, even assuming ACC
7 resumes in person visits.

8
9 5. It is critical that counsel be able to meet with Mr. Smith in person. The
10 government recently disclosed discovery that counsel has not had an opportunity to review
11 with Mr. Smith. Under the terms of the protective order, counsel cannot mail copies of the
12 discovery to Mr. Smith but must review it with him in person. Furthermore, counsels' only
13 contact with their client is by video-conference calls with limited private communications
14 and no ability to review discovery.

15 6. Returning Mr. Smith to FDC SeaTac will allow his counsel to meet with him
16 in person to continue trial preparations. This is necessary for his counsel to provide him the
17 effective representation to which he is constitutionally entitled, and it will enable counsel to
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20 ² <https://doc.alaska.gov/institutions/anchorage>.

21 ³ <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.

22 ⁴ [https://www.usnews.com/news/best-states/alaska/articles/2021-09-16/health-official-](https://www.usnews.com/news/best-states/alaska/articles/2021-09-16/health-official-alaska-facing-sharp-surge-in-covid-19-cases)
23 [alaska-facing-sharp-surge-in-covid-19-cases](https://www.usnews.com/news/best-states/alaska/articles/2021-09-16/health-official-alaska-facing-sharp-surge-in-covid-19-cases).

24 [https://www.adn.com/alaska-news/2021/10/03/covid-19-in-alaska-fact-checking-claims-](https://www.adn.com/alaska-news/2021/10/03/covid-19-in-alaska-fact-checking-claims-about-case-trends-death-rates-masks-and-ivermectin/)
25 [about-case-trends-death-rates-masks-and-ivermectin/](https://www.adn.com/alaska-news/2021/10/03/covid-19-in-alaska-fact-checking-claims-about-case-trends-death-rates-masks-and-ivermectin/)

1 use the time pending trial efficiently, so that they are prepared to try this case once conditions
2 in Alaska improve.

3 7. According to counsel for the government, Karen Vandergaw, the government
4 does not oppose Mr. Smith's request to be returned to FDC SeaTac.

5 **CONCLUSION**

6 For the foregoing reasons, Defendant John Pearl Smith, II, respectfully asks the
7 Court to order the United States Marshal Service to return him to FDC SeaTac as soon as
8 possible and to allow him to remain at FDC SeaTac pending trial.

9 DATED this 4th day of October 2021.

10
11 /s/Suzanne Lee Elliott
12 Law Office of Suzanne Lee Elliott
13 1300 Hoge Building
14 705 Second Avenue
15 Seattle, Washington 98104
16 Phone (206) 623-0291
17 Fax (206) 623-2186
18 Email: Suzanne-elliott@msn.com

19 /s/ Mark A. Larrañaga
20 Mark A. Larrañaga,
21 Walsh & Larrañaga
22 140 Lakeside Ave., Suite #338-A
23 Seattle, WA 98122
24 Phone: 206-972-0151
25 Mark@jamlegal.com

/s/ Theresa Duncan
Duncan Earnest, LLC
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Suite 1
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505-710-6586
teri@duncanearnest.com

Attorneys for Defendant John P. Smith

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2 Certificate of Service

3 I certify that I electronically filed the
4 foregoing, and any attachments, with the Clerk
5 of court for the U.S. District Court for the
6 District of Alaska by using the district's
7 CM/ECF system on October 4, 2021. All
8 participants are registered CM/ECF users and
9 will be served by the district's CM/ECF
10 system.

11
12 /s/ Theresa M. Duncan
13 Theresa M. Duncan
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